SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 756

MARGARET B. CARPENTER AND LEROY E. CARPENTER,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of the Courts Below.

The judgment of the Supreme Court of California denying the petitioners' Petition for a Writ of Certiorari (or review) was entered without opinion.[10] Pertinent decisions are:

Hamilton v. *Carpenter,* Supreme Court of California, 99 Cal. Dec. 129, set forth at R. 46 in No. 93, Oct. Term, 1940;

Carpenter v. *Hamilton,* 13 Cal. App. (2d) 69, set forth at R. 38 in No. 93, *supra.*

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[10] R. 4, in instant case.

II.

Jurisdiction.

1. Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of this Court is invoked under Judicial Code, Sec. 237b, as amended by Act of February 13, 1925, 43 Statutes 937.

2. Finality of Judgment.

The judgment forming the basis of the petition is final both in form and substance and disposes of all the elements of controversy in the court below.

3. Petition Timely Filed.

The judgment of the Supreme Court, sought to be reviewed herein, was entered November 25, 1940 (R. 4).

4. Judgment of the Highest State Court.

The Supreme Court of the State of California is the court of last resort in California.

5. Federal Question, Timely, Properly and Adequately Raised.

The petitioners, in their "Petition for Writ of Certiorari" to the Supreme Court of California, asserted the claim that the judgment of the Los Angeles Superior Court decreeing foreclosure of the petitioners' home constituted a deprivation of their "property without due process of law as guaranteed to the petitioners by the Fourteenth Amendment of the Constitution of the United States."[11]

This matter is discussed more fully in the Petition herein, *supra*, p. 2, footnote 1.

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[11] R. 2, in instant case.

6. Cases Sustaining Jurisdiction.

The following case, among others, sustains the jurisdiction of this court:

Hansberry v. *Lee*, No. 29, Oct. Term, 1940, decided November 12, 1940, 310 U. S. —.

III.

Statement of the Case.[12]

The first action, instituted by the petitioners, against Hamilton (*Carpenter* v. *Hamilton*) was an action at law for damages. The petitioners sought to recover damages because of the false representations made to them by Hamilton.

There were two concurrent rulings in said damage action, the judgment notwithstanding the verdict, which the District Court of Appeals ordered to be entered, and the order by the trial court for a new trial as to all the issues, which order was affirmed by that Appellate Court in the same decision (R. 45).

Of said two rulings the trial court, in the second suit, sitting in equity, disregarded the order for a new trial and selected the judgment notwithstanding the verdict, which had been entered in the proceedings of the vacated trial (R. 45), as the final judgment of the damage action, upon the judgment roll of the damage action being introduced into the foreclosure action as *res adjudicata* of the defense issue of "unclean hands" (R. 27). Said selection was affirmed by the Supreme Court (R. 48).

The final judgment below in the first cause of action denied the petitioners relief at law. It was based *not* upon a finding or adjudication that Hamilton was not guilty of the fraud charged; on the contrary, the ruling

[12] This statement is supplemental to that contained under "Summary Statement of Matter Involved", *supra*, p. 1.

and adjudication was that the petitioners (the plaintiffs in that action) had not made that thorough-going inspection of the premises which would have resulted in a discovery by them that Hamilton had committed the fraud complained of; that accordingly the petitioners, because of their *neglect* of duty to make such investigation, were not entitled to recover, in an action at law, against Hamilton. Thus the District Court of Appeals ruled:

> "Plaintiffs (petitioners) had a right to rely upon the representations made to them concerning matters of fact which were unknown to them without making any inquiry concerning the truth thereof, and had they done so defendant (Hamilton) could not *evade the consequences* of any false and fraudulent statements he may have made by showing that means of knowledge of the truth were easily available to the plaintiffs.
>
> "It is to be conceded that if they (the petitioners) had made no examination of the property defendant *could not excuse his fraud* by the plea that plaintiffs (petitioners) were negligent in believing what he said, and in failing to make an independent investigation, but having undertaken the inquiry, plaintiffs were obliged to look with seeing eyes. When the inspection was over they *could not excuse their ignorance* of what they should have seen by pleading the superficial character of their examination." [13]

It is apparent, from the foregoing, that the California courts did not exonerate Hamilton of the charge of fraud.

Indeed, its decision is founded on the premise that he was guilty of the fraudulent representations as charged by the petitioners.

The court concluded:

> "They (the petitioners) may not deny knowledge of facts which would have been known to them but for their

[13] Italics ours. All emphasis hereinafter, unless otherwise indicated, will be ours.

negligence. * * * Courts cannot be expected to extricate persons from entanglements into which they have fallen through their own *neglect* of duty."

In the second proceeding Hamilton was the complaining and hence moving party. He instituted an *action in equity* for the foreclosure of the trust deed upon the property. It was an action to procure or substitute judicial decree of sale against the land, in lieu of the trustee's sale, which he was free to pursue under the trust deed, without judicial decree. Sec. 2924, Civil Code.

He sought the aid of a court of good conscience. Although between the same parties, the second suit was based upon a *different* cause of action.

The first cause of action was at law; the second, at equity. This distinction has long been recognized in California. An action for damages for fraud is an action at law. *Stephan* v. *Superior Court*, 183 Cal. 673. A suit for foreclosure of real property is an *equitable proceeding* as distinguished from an action at law. *Birchetto* v. *Raney*, 76 Cal. App. 232.

The first cause of action was for damages; it did not involve a judicial decree of sale against the land nor the title to property. The second cause of action was not for damages; it involved a judicial decree of sale against the land and the title to property.

Action for judicial decree of sale in lieu of the trustee's sale raised the following issues as shown by the record:

1. The conversion of the principal of the trust deed with interest at 6% into a judgment with interest at 7%. (R. 3, 25);

2. The extension of the interest-bearing period to cover the time consumed in litigating the action (R. 25);

3. The award of attorney's fees in the extraordinary sum of $800.00, plus interest at 7%, upon the note as a separate instrument (R. 3, 20, 25), whereas the note and trust deed

were one instrument and the only attorney's fees provided were fees for the sale of the property, should the attorney act in lieu of the trustee in conducting the sale. Said fees were limited to an amount deemed reasonable by the court, not to exceed $25.00 in case of a trust deed nor $50.00 in case of a mortgage (Sections 2924, 2924 a, 2924 c, California Civil Code; Sec. 580 c, California Code of Civil Procedure).

4. The award of court costs in addition to costs of sale (R. 25).

It is clear from the record that all of the above issues were adjudicated in the foreclosure action and said items were added to the obligation of the trust deed and decreed against the land, with interest at 7% (R. 24, 25).

It is equally clear, upon the face of the Opinion of the District Court of Appeals (R. 38-45), that none of said issues were pleaded or adjudicated in the prior damage action.

The first cause of action—the damage action—as actually litigated, did *not* adjudicate, whether or not Hamilton was guilty of fraud. In the second cause of action—the foreclosure action—Hamilton's alleged fraud and misrepresentation were competent and indispensable issues as raised by the pleadings; evidence proffered in support thereof was equally competent and indispensable, in order to afford the petitioners a full and fair hearing.

> "A warranty is said to be such recommendations or affirmations at the time of purchase as are supposed to have induced the sale and are as much a part of the contract as any other part of the contract, and not a mere collateral understanding. There is no distinction between fraudulent representations going to induce a contract and representations in the nature of warranties. * * * The warranty is binding whether or not there is fraud." N.C.D., Vol. 21, p. 87.

In the foreclosure suit, the trial court rejected the petitioners' offer of proof to the effect that Hamilton's conduct had been fraudulent, and that Hamilton's hands were "unclean", on the ground of "*res adjudicata*". The Supreme Court of California upheld the ruling, declaring:

> "No serious consideration may be accorded the attempted invocation of the maxim that he who comes into equity must come with clean hands. A sufficient answer to the contention in this respect is that the issue of fraud, having been adjudicated favorably (in the former suit) to the plaintiff herein (Hamilton), there is no place for the application of the maxim."

This statement is essentially incorrect. The issue as to whether *Hamilton was guilty of fraud* was *not* determined in the former proceeding. The only issue litigated was that the petitioners, because of their *neglect* to conduct a complete investigation, were entitled to no damages against Hamilton, in an action at law.

The following factual and legal issues, accordingly, pertinent to the second proceeding, were *not* disposed of in the first.

1. Was Hamilton guilty of fraud or any unconscionable conduct?

2. Was that fraud or unconscionable conduct such as to bar him from relief in a court of equity and good conscience; and such as to bar him from a judicial decree of foreclosure and sale, which increased the benefits to himself and enlarged the obligation of the trustors under the trust deed?

3. Is the rejection of evidence by a State court, tending to prove such fraud or unconscionable conduct, the denial of a hearing and hence a deprivation of due process under the federal Constitution?

IV.

Specification of Errors.

The petitioners assign the following errors in the record and proceedings below:

The California courts—the Superior Court of Los Angeles County and the Supreme Court of the State of California, which affirmed the judgment of said Superior Court—erred in their decisions and judgments in the following particulars:

The judgment of the Superior Court (affirmed by the Supreme Court of California) deprives the petitioners of property without due process of law as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, in that said judgment was entered without affording petitioners the right to a hearing upon a substantive defense—namely, that the plaintiff in the action against them had made false and fraudulent representations in the course of the sale of the property to them, and therefore was guilty of "unclean hands".

Said judgment abridges the petitioners' property in deprivation of federal due process, in that it is based upon a ruling that the petitioners were not entitled to assert and prove as a defense that the plaintiff was guilty of false and fraudulent representations; this ruling, in turn, was based upon a misapplication of the doctrine of "*res adjudicata*".

V.

Summary of Argument.

The judgment of the Superior Court (affirmed by the Supreme Court of California) deprives the petitioners of property without due process of law as guaranteed to

them by the Fourteenth Amendment to the Constitution of the United States, in that said judgment was entered without affording petitioners the right to a hearing upon a substantive defense—namely, that the plaintiff in the action against them had made false and fraudulent representations in the course of the sale of the property to them, and therefore was guilty of "unclean hands".

Said judgment abridged the petitioners' property in deprivation of federal due process, in that it is based upon a ruling that the petitioners were not entitled to assert and prove as a defense that the plaintiff was guilty of false and fraudulent representations; this ruling, in turn, was based upon a misapplication of the doctrine of *"res adjudicata"*.

Point 1. *This Court will review the procedure in State courts when the application by a State court of the doctrine of "res adjudicata" is challenged as an impairment of federal due process.*

Point 2. *The refusal by a State court to permit a defendant to assert and prove a substantial defense, constitutes a denial of a hearing; a judgment depriving a defendant of property based upon such a denial of a hearing, constitutes a deprivation of property without due process of law.*

Point 3. *A judgment of a State court constitutes an adjudication with respect to only those matters arising in a subsequent suit, upon a different cause of action between the same parties, as have been actually litigated in the first proceeding.*

Point 4. *The doctrine of "unclean hands" is inherent in federal due process.*

VI.

ARGUMENT.

The judgment of the Superior Court (affirmed by the Supreme Court of California) deprives the petitioners of property without due process of law as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, in that said judgment was entered without affording petitioners the right to a hearing upon a substantive defense—namely, that the plaintiff in the action against them had made false and fraudulent representations in the course of the sale of the property to them, and therefore was guilty of "unclean hands".

Said judgment abridged the petitioners' property in deprivation of federal due process, in that it is based upon a ruling that the petitioners were not entitled to assert and prove as a defense that the plaintiff was guilty of false and fraudulent representations; this ruling, in turn, was based upon a misapplication of the doctrine of "*res adjudicata*".

Point 1.

1. *This Court will review the procedure in State courts when the application by a State court of the doctrine of "res adjudicata" is challenged as an impairment of federal due process.*

When a judgment of a State court is challenged because of an alleged abridgment of federal due process, and it is urged in reply, that the judgment is in accord with the local law, in that it is based upon an application by the local courts of the doctrine of "*res adjudicata*", this Court will review the course of procedure in the State courts and determine whether such course is either consistent with, or runs counter, to the minimum requirements of federal due process.

Hansberry v. *Lee, supra,* decided:

"State courts are free to attach such descriptive label to litigations before them as they may choose, and to attribute to them such consequences as they think appropriate under state constitution and laws, subject only to the requirements of the Constitution of the United States. But when a judgment of a state court, ascribing to the judgment of another court the binding force and effect of *res adjudicata* is challenged for want of due process, it becomes the duty of this court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes."

Where necessary this Court will review the evidence, when a federal right has been asserted and allegedly denied by a State Court.

Pierre v. *Louisiana,* 306 U. S. 354, 358.

"When a claim is properly asserted, * * * it becomes our solemn duty to make independent inquiry and determination of the disputed facts."

Norris v. *Alabama,* 294 U. S. 587, 590.

"That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied.

"When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms, but also whether it was denied in substance and effect. If this requires an examination of evidence, the examination will be made."

Cf. *U. S. Shoe Machinery* v. *U. S.,* 258 U. S. 451, 459:

"In other words, to determine the effect of a former judgment pleaded as an estoppel, two questions must be answered:

(1) Was the former judgment rendered in the same cause of action?

(2) If not, was such matter litigated in the former suit determinative of the matter in controversy in the second suit?

To answer these questions we must look to the pleadings making the issues, and examine the record to determine the questions essential to the decision of the former controversy."

And it is settled that due process is more than mere notice and hearing.[14]

It is now determined that any abridgment by the State Courts of the "rudimentary demands of justice" may be challenged as a denial of federal constitutional right.[15]

Point 2.

The refusal by a State court to permit a defendant to assert and prove a substantial defense, constitutes a denial of a hearing; a judgment depriving a defendant of property based upon such a denial of a hearing, constitutes a deprivation of property without due process of law.

In *Georgia Railway and Electric Company* v. *City of Decatur,* 295 U. S. 165, 171, it is decided that:

"The refusal of a (State) court to receive or consider any proof whatever on the subject amounts to a denial of a hearing on that issue in contravention of the due process clause of the Constitution."

Accord, opinion by Justice Holmes in *Saunders* v. *Shaw,* 244 U. S. 317, 319.

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[14] *Mooney* v. *Holohan, supra.*

[15] Compare the line of cases by this Court beginning with *Frank* v. *Mangum,* 237 U. S. 309, and *Moore* v. *Dempsey,* 261 U. S. 86, and concluding with *Chambers* v. *Florida,* 308 U. S. 541, and *White* v. *Texas, supra.*

Point 3.

A judgment of a State court constitutes an adjudication with respect to only those matters arising in a subsequent suit, upon a different cause of action between the same parties, as have been actually litigated in the first proceeding.

The law is thus summarized in a recent decision by this court:

> *Larson* v. *Northland Transportation Company*, 292 U. S. 20, 25:
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> "The established rule in this Court is that, if, in a second action between the same parties, a claim or demand different from the one sued upon in the prior action is presented, then the judgment in the former claim is an estoppel 'only as to those matters in issue or point controverted, upon the determination of which the finding or verdict was rendered.' "

In accord is *Virginia-Carolina Chemical Company* v. *Kirven*, 215 U. S. 252, 257,

> "If the second action is upon a different claim or demand, the bar of the judgment is limited to that which was *actually* litigated and determined."

> *McComb* v. *Frink*, 149 U. S. 629, 641, is to the effect that:
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> "In all cases where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, *the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been litigated and determined. Only upon such matters is the judgment conclusive in another action.*"

Until the decision of the Supreme Court of California in the instant case the above had been the California law.

Thus, in *Lillis* v. *Immigrant Ditch Co.*, 95 Cal. App. 533, 538, we find:

> "If, however, the cause of action or demand upon which the former judgment was rendered is different from the one prosecuted in the second action, it is then necessary to ascertain as a question of fact what issues or matters were determined in the former action, and then to determine as a matter of law whether those issues and their determination were essential to the former judgment; *for it is only issues* upon which that judgment depends that the parties are estopped from litigating in any other action. Matters which were merely collateral or incidental to the former determination do not constitute an estoppel, even though they were litigated and decided therein; *and the evidence which was introduced in support of such issues may always be introduced in support of a defense in any other action.* The judgment in such a case does not become an estoppel as to all matter which *might* have been litigated therein, but only as to such as were *actually litigated,* and which were necessary to be determined by the court before rendering its judgment upon the demand or defense."

The California Statute law as summarized by the Supreme Court of California, and until abrogated by the California courts in the case at bar, is to the same effect.

McCormick v. *Gross*, 135 Cal. 304:

> "It is provided in Section 1908 of the Code of Civil Procedure (of California) that 'a judgment or order in certain cases is conclusive between the parties as *'to the matter directly adjudged'*, and, in section 1911, 'that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was *actually* and *necessarily* included therein or *necessary* thereto.' "

It seems clear that the first judgment (in *Carpenter* v. *Hamilton*) as ordered by the District Court of Appeals, did

not adjudicate the issue whether or not Hamilton had perpetuated a fraud, or was guilty of unconscionable conduct. That issue was neither

(a) actually litigated, nor
(b) necessary to be determined before rendering judgment against the petitioners.

The only issue that was actually litigated, and a determination upon which was necessary in order to support the judgment in favor of Hamilton, was the *neglect* of the petitioners to make that full investigation of the premises which would have led them to a discovery of Hamilton's fraud. The petitioners' equitable defense—Hamilton's fraud, and hence his alleged "unclean hands"—were not passed upon in the former proceedings, and could not have been properly determined in the former action at law, under the law and practice of California.

Point 4.

The doctrine of "unclean hands" is inherent in federal due process.

Its rejection by the State Courts violates federal due process.

This doctrine has been summarized by this court in the *De Weese* v. *Reinhard* case, 165 U. S. 386, 390, as follows:

> "The meaning and proper application of the maxim are to be considered. As authoritatively expounded, the words and the reasons upon which it rests extend to the party seeking relief in equity. 'It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come into court with clean hands * * *'. The governing principle is 'that whenever a party who, as actor, seeks to set the judicial machinery in motion and

> obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him *in limine;* the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.' Pomeroy, Equity Jurisprudence, 4th ed., Section 397. This court has declared: 'It is a principle in chancery, that he who asks relief must have acted in good faith. The equitable powers of this court can never be exerted in behalf of one who has acted fraudulently or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this court the abetter of iniquity.' *Bein* v. *Heath,* 6 How. 228, 247. And again: 'A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity.''

For a quarter of a century, up to the instant case, the above had been the law of California.[16]

As early as 1910, the California District Court of Appeals in *Brandt* v. *Krogh,* 14 Cal. App. 39, had declared:

> "A court of equity is a court of conscience, and will under no circumstances enforce or permit to be enforced the terms of a contract founded in fraud, *even if there existed and were accessible to the defendant the means and opportunity to detect such fraud by the exercise of ordinary prudence.*"

This familiar principle the California courts refused to apply to the petitioners.

That refusal was more than mere error of law on the one hand; or misapplication of local law on the other hand. It robbed the petitioners of the right to a *hearing* in defense

[16] 10 *Calif. Jurisprudence* 515; *Allstead* v. *Laumeister,* 16 Cal. App. 559; *Kreamer* v. *Earl,* 91 Cal. 112.

of their property; it thus deprived them of the essence of due process.

Conclusion.

This Court has shown a deep concern to "retain equity as a living system and save it from sterility." [17]

At the heart of a court of equity and conscience must be the equitable concept that the fraudulent may not seek and secure the aid of a court of justice on consummating their fraud. Heretofore the above has been the law of California. The California courts had declared, prior to the case at bar:

> "A court of equity will not allow itself to become a hand-maid of inequity of any kind. It intervenes, not for the sake of the party who is benefited by the intervention, but for the sake of the law itself." [18]

That is the law of the United States.

> "The governing principle has long been settled. It is that a court will not redress a wrong when one who invokes its aid has 'unclean hands' * * * The aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination. The rule is one, not of action, but of inaction. It is sometimes spoken of as a rule of substantive law. But it extends to matters of procedure as well. A defense may be waived. It is waived when not pleaded. But the objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all parties to the litigation. The court protects itself." *Olmstead* v. *United States*, 277 U. S. 438, 471.[19]

[17] Justice Frankfurter in *Sprague* v. *Ticonic National Bank, et al.*, 307 U. S. 161, 167.

[18] *Richman* v. *Bank of Perris*, 102 Cal. App. 71.

[19] Justice Brandeis' great dissent became the law of the land, when Mr. Justice Frankfurter spoke for this Court in *Nardone* v. *U. S.*, 302 U. S. 379; 308 U. S. 338.

The equitable concept of "unclean hands"—that the courts will protect themselves from the fraudulent and unconscionable—should be held by this Court to apply to all the courts of the nation—state as well as federal. The principle must be held to inhere in federal due process. For this Court to permit the state courts to abrogate this ancient and fundamental precept, and to refuse to apply it, is to sanction the sacrifice of elementary and essential justice.[20]

This court has heretofore adequately protected the property rights of "capitalist"[21] corporate wealth. In recent years it has afforded zealous protection to the personal liberties of the worker,[22] the poor,[23] and the defenseless.[24]

The petitioners are at neither end of the social pyramid. They are members of the "middle class," fighting in the courts for *their* property—and said property is their home.[25]

In the California courts, the petitioners were not accorded their "day in court." They were denied the right to a hearing. That denial, they assert, constituted a deprivation of their property at variance with federal due process.

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[20] *Cf.* Justice Cardozo in *Palko* v. *Connecticut*, 302 U. S. 219.

[21] The phrase is that of Justice Brandeis, dissenting in *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Association*, 274 U. S. 37, 56.

[22] *Thornhill* v. *Alabama*, 308 U. S. 547.

[23] *Chambers* v. *Florida*, 308 U. S. 541, and *White* v. *Texas*, *supra*.

[24] *Powell* v. *Alabama*, 287 U. S. 45, and *Johnston* v. *Zerbst*, 304 U. S. 458.

[25] The Supreme Court of California, in the instant case reversed the California law. Its decision, if allowed to remain in the law books unchallenged and unreversed, will justify the following paraphrasing of Pitt: "A free man's home is his castle. Neither the King nor the Sovereign may enter it. But that which neither of them may do, the fraudulent and unconscionable may; they may not only enter the free man's home; they may take it away from him—and they may convert a court of equity and conscience, into their ready hand-maiden, to consummate their fraud."

Petitioners pray that the wide ambit of the due process of the federal Constitution, which has heretofore protected both the rich and the poor, will be held by this Court to protect them also.

Respectfully submitted,

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